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C O N F I D E N T I A L SECTION 01 OF 03 GUATEMALA 000047

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SUBJECT: LETTER FROM GUATEMALA (3)

REF: 04 GUATEMALA 3211

Classified By: Ambassador John R. Hamilton, Reason: 1.4 (d).

[11.](#) (U) This is the third in our planned biweekly series of discursive messages on what's ticking in Guatemala.

Generics: Moving to Plan B after Xmas Setback

[12.](#) (C) President Berger signed into law Decree 34-2004 on December 22, effectively eliminating data protection for pharmaceuticals and agricultural chemicals. This despite a furious lobbying effort by the Ambassador, Country Team, and a direct call from USTR Zoellick, informing Berger and his cabinet of the negative consequences for CAFTA ratification. Berger committed to the Ambassador and Amb. Zoellick that, although he politically could not veto the legislation, he would send fresh legislation restoring data protection along with a CAFTA ratification package to the Congress for speedy approval in mid-late January. Investment and Competitiveness Commissioner Fernandez told us late Jan. 5 that the government had decided that new legislation would be drawn directly from CAFTA text, presumably to demonstrate that Guatemala is giving only the protection that is absolutely necessary and not being forced into anything more. All of this is easy to say, but things won't necessarily go as quickly and smoothly as planned in a Congress that shows little discipline and has yet to discuss CAFTA seriously. In any event, supporting this process is our new best option.

[13.](#) (C) The press was quick to criticize the U.S. following the press release of USTR's position that we could not forward the CAFTA for ratification with Guatemala moving away from its commitments. Supposed public health advocates and representatives of the local pharmaceutical copying industry congratulated the government for its action, claiming the U.S. was using CAFTA to eliminate access to generics in general through data protection legislation. Nobel Peace Prize laureate and newly minted generics entrepreneur Rigoberta Menchu joined the fray with some particularly unfortunate rhetoric (e.g., "blackmail," "FTA with an anti-human face," "U.S. policies that increase poverty and unemployment"). The Ambassador responded by hosting a group of seven representatives of major media outlets in an effort to educate a seriously misinformed press. He spent additional time with the press on the record at several public events where he was approached on the issue. The initial outreach appears to have paid off, as subsequent articles have shifted a little towards balanced. EconCouns has since been on two radio talk shows and taped a follow-up with representatives of generics producers. More are scheduled to clarify facts and drive home our central theme that generics and data protection can thrive together, just as they do in the U.S. The host of the first show concluded helpfully that it was a "myth" that CAFTA would eliminate generics. In private, we continue to press the GoG to follow through with its commitment to both a legislative fix and CAFTA ratification as soon as possible. DUSTR Allgeier will visit next week to reinforce the message directly with Berger.

Generics Reveal Dysfunction in the Presidency

[14.](#) (C) The headache over generics has highlighted the organizational weakness of the Berger presidency, something Guatemalans increasingly notice and include in their chatter. Berger can seem like a bold leader with vision when seized with a good idea, such as slashing the size of the military and airing the details of its budget. But when he starts off with a wrong-headed notion, in this case that data protection is somehow creating a health care problem, it can be almost impossible to get through to him with facts and a different opinion. Economy Minister Cuevas threw in the towel several months ago. A host of others have tried, including Commissioner Fernandez, Ambassador Castillo, and, most significantly, Vice President Stein. Tourism Commissioner Kaltschmitt, who has an agro-chemical joint venture with Monsanto and understands the subject thoroughly, told us that he tried as well, only to get a very Guatemalan (jovially vulgar) brush-off from his childhood friend. What Berger is clearly missing is a strong and competent chief of staff to vet ideas and initiatives where appropriate throughout the Cabinet and distill the elements required for informed presidential decisions. That could have prevented the Health Minister's half-cocked (if not larcenous) crusade from

threatening to derail the CAFTA. Berger may also need to train himself to listen to a competent and hardworking COS, but that won't happen until he has one. The imminent transfer of Energy and Mines Minister Roberto Gonzalez to the Presidency may help. He seems the sort of person who might roll up his sleeves and bring a more systematic approach to running the Presidency.

Good Early News on the Fiscal Front

15. (C) Investment and Competitiveness Commissioner Mickey Fernandez told EconCouns Jan. 4 that he had just returned from going over preliminary CY-04 budget figures with Finance Minister Maria Antonieta "Toni" Bonilla. The news was "much better than expected": the fiscal deficit for the year looked to be in the range of 1.1% of GDP, well below the target of 1.7% of GDP. Many observers had considered 1.7% too optimistic. Fernandez said that better-than-expected revenue receipts was the main factor behind the good news, without going into any further detail. He laughed when EconCouns noted that this "surprise" was one we had been anticipating for months.

16. (C) The Guatemalan finance team of Bonilla, Government Plan Commissioner Aitkenhead, and former chief revenueur (newly Superintendent of Banks) Willy Zapata has consistently painted a pessimistic scenario for revenues due to a court ruling overturning the IEMA alternative minimum tax and only limited success with a mid-year tax reform package. Part of this reflects the caution and conservatism that characterizes the team, two of whom (Bonilla and Zapata) have spent much of their professional lives as central bankers and fully act the part. There is also, however, a bit of gamesmanship in the conservatism. The mantra of taxpayers, led by the business elite, has been one of no more taxes until 1) everyone pays the current ones and 2) government waste, fraud and mismanagement are stanching. Setting low revenue expectations and then exceeding them shows that Berger's team is having some success (which, indeed, they are) in meeting the taxpayers' first demand. Reducing the military and prosecuting corrupt former officials does the same with the second. We had been witnessing a strong performance in improving collections over the course of the year and were counting on 2004 revenues exceeding those for 2003, despite the loss of the IEMA (04 Guatemala 1765). We will look into this in further detail when the numbers become available.

Closing in on Julio Giron?

17. (U) Ex-President Portillo's former Private Secretary Julio Giron was back in the news on Jan. 3, together with a picture of a half-million dollar check made out to cash and a deposit slip and endorsement showing that the funds had been deposited in Giron's account in TotalBank, Coconut Grove. The check was drawn on a Miami ABN-AMRO Bank account of Comcel Guatemala, the Millicom-affiliated cellular telephone service provider. The press noted that the date of the check, Oct. 19 1999, was less than three weeks before Portillo's election. Months later, Comcel received cellular band B without a public tender and was exonerated from a 10% royalty payable to the vestigial parastatal telephone company Guatel. Comcel's current general manager confirmed the authenticity of the check but said he had no information on what it was for as documents from the era had been retired. Attorney General Juan Luis Florido announced that a special prosecutor would be named to investigate the matter.

18. (C) We first learned of this case in 2002 when helping anti-corruption prosecutor Juan Pablo Rios work through an elaborate kiting and money-laundering scheme using the moribund state mortgage bank (CHN) and a series of banks and exchange houses to direct carloads of cash (probably phantom military payrolls) to the U.S. accounts of Guatemalan government and organized crime figures (02 Guatemala 2901). Rios also gave us a copy of the Comcel/Giron documents described above, plus similar documents covering two additional half-million dollar Comcel payments to Giron in November 1999 and January 2000. Yet another set of documents indicates that Comcel paid a million dollars to Cesar Medina Farfan, a Portillo crony implicated in the "Panama Connection" case, in June 2000. The million was transferred to Giron's account the next day, according to a copy of a debit notice. All of these document copies have been shared with U.S. law enforcement. The good news here is this case may finally start to go somewhere within the Guatemalan judicial system. Prosecutor Rios, for all of his energy and manifest goodwill, was justifiably unwilling to show all that he had to his superiors while the Portillo government was still in power due to the links with some of the most dangerous names in organized crime. We gave Attorney General Florido copies of these checks about six months ago (on receiving the documents, his comment was "it's beginning to look a lot like Christmas!"), which leaves us wondering why he waited until now to leak. Florido and leaks have a

history together.

Holiday Season Travel

19. (U) With the end-of-year shift of focus to holiday celebrations, public security loomed large as a topic of conversation and government attention. The government mobilized additional police and military personnel (as it has done in previous years) to cope with the holiday crowds and increased traffic. Police also increased drunk driving checkpoints at the same time that the government lifted alcohol sales restrictions (i.e. the late night cutoff on alcohol sales) for Christmas Eve, Christmas, New Year's Eve, and New Year's Day.

110. (SBU) In response to criticisms about highway security, most notably robberies of Salvadorans visiting Guatemala, President Berger took a pre-Christmas drive from the Salvadoran border to the capital to inspect police and military security measures. The police have established fixed checkpoints and roving patrols on the three principal routes from El Salvador. The Army's Third Brigade headquartered in Jutiapa has two thirds of its personnel devoted to highway security (with the remainder participating in joint police-military patrols in the capital) using fixed highway checkpoints, foot patrols along certain highway routes, and detachments stationed at, or near, border entry stations. However, despite the security measures, Guatemalan authorities were embarrassed when a Salvadoran Vice Minister was robbed on the highway during the holiday season. And despite GOG pleas, Salvadoran groups are continuing their publicity campaign warning against travel to Guatemala.
HAMILTON